

NEWPORT BEACH PLANNING COMMISSION MINUTES
Council Chambers – 3300 Newport Boulevard
Thursday, June 21, 2012
REGULAR MEETING
6:30 p.m.

I. CALL TO ORDER – The meeting was called to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE - Commissioner Brown

III. ROLL CALL

PRESENT: Brown, Hillgren, Kramer (arrived at 6:37 p.m.), Myers, Toerge, and Tucker
ABSENT: Ameri

Staff Present: Kim Brandt, Community Development Director; Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Tony Brine, City Traffic Engineer; and Patrick Alford, Planning Manager

IV. PUBLIC COMMENTS

Chair Toerge invited comments from those in the audience who wished to address the Commission on other than Agenda items. There was no response and Chair Toerge closed the public comments section of the meeting.

V. REQUEST FOR CONTINUANCES

None

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF JUNE 7, 2012

Motion made by Vice Chair Hillgren and seconded by Commissioner Tucker, and carried (4 – 1), to approve the minutes of the Planning Commission meeting of June 7, 2012, as amended.

AYES: Brown, Hillgren, Toerge, and Tucker
NOES: None
ABSTENTIONS: Myers
ABSENT: Ameri and Kramer

Interested parties were invited to address the Commission. There was no response and Chair Toerge closed public comments for this item.

Commissioner Kramer arrived at this juncture (6:37 p.m.).

VII. PUBLIC HEARING ITEMS

ITEM NO. 2 NEWPORT BANNING RANCH - (PA2008-114)
Site Location: 5200 West Coast Highway

Chair Toerge read the title to the aforementioned item, opened the public hearing and called for a report from staff. Planning Manager Patrick Alford addressed previous study sessions and public hearings regarding the subject project and noted that once the Planning Commission makes its determination, the item will go before Council at a date to be determined. He mentioned that the new materials contained in the staff report is in response to comments made by the Commission during the last hearing. He stated that the Commission was being asked to

reaffirm their recommendation to certify the EIR, partly due to comments from the public that the action was unexpected because continuation of the overall hearing was recommended on the agenda. Therefore, staff will present the item again so that the Planning Commission can affirm its recommendation for certification of the EIR. Mr. Alford noted that additional information is being provided by way of refinement of the findings and detailed facts in support of the findings.

Commissioner Tucker noted that the Planning Commission has the opportunity to reconsider its decision and change its recommendation if it so desires at this time.

Mr. Alford reported that the Mitigation Monitoring and Reporting Program were refined to reflect the changes in conditions of approval. He added that the Statement of Overriding Considerations that can now be reviewed and presented as part of the Planning Commission recommendation to the City Council. He reported receiving letters concerning the EIR and that BonTerra Consulting reviewed each in detail and concluded that there is no new information that would affect the conclusions in the EIR.

Mr. Alford reported inclusion of the entire Development Agreement for consideration and noted that it identifies public benefits in the form of a public benefit fee per dwelling unit and full improvement of the North and Central Community Park. He reported that the Development Agreement also addresses the 17th to 19th Street segment of North Bluff Road, noting that they are contingent upon the Coastal Commission's approval of the project.

Mr. Alford corrected a typographical error in the Development Agreement noting that "the City shall not unreasonably delay the project."

Commissioner Tucker commented on the Development Agreement regarding scope and phasing tying into the EIR.

Mr. Alford addressed the Affordable Housing Implementation Plan, noting staff discovered an apparent conflict that needed clarification. He noted there is a provision indicating that a minimum of 50 percent of the dwelling units would be guaranteed to be constructed on site. However, he pointed out another provision indicating that a land dedication alone could be done in lieu of construction or payment of fees. He stated discussing the issue with the applicant, who indicated their intent is to construct 50 percent of the units on site, and language was revised to ensure clarity. Another issue pertained to reclaimed water and Mr. Alford indicated there was no provision in the document providing reclaimed water to serve the project. He reported that there is no City policy that requires the use of reclaimed water, that it is not proposed as a component of the project and that no source has been identified to provide same.

Regarding the proposed Resort Inn, Mr. Alford reported that the Commission asked for a provision providing a "window of opportunity" where the applicant would make a good-faith effort to develop a resort inn. He presented details of options available for the Commission to consider and which will be incorporated into the Planned Community text.

In response to Chair Toerge's inquiry, Assistant City Attorney Mulvihill reported that the approval date of the agreement would be the date wherein Council took action.

Mr. Alford confirmed Commissioner Tucker's statement that the Resort Inn is not a requirement. He noted that the Master Development Plan and PC Text allows for some of the 1,375 units to be developed in the Resort Colony area.

Discussion followed regarding mandated and non-mandated development components.

Vice Chair Hillgren stated he could not find the ability to convert from hotel units to residential units within the General Plan. Mr. Alford reported it is not addressed in the General Plan and there is no provision for the conversion proposed as part of the project.

Commissioner Kramer commented on concerns with the conversion of the area identified as the Resort Colony into residential could exceed 1,375 units. He indicated another concern regarding the pedestrian bridge being contingent upon the certificate of occupancy for the Resort Inn being approved.

Mr. Alford affirmed that the pedestrian bridge is an optional component of the project, but that its timing and phasing is linked to the Resort Inn.

Deputy Community Development Director Brenda Wisneski reported that if the Resort Inn is not built, the bridge would be an option.

Chair Toerge inquired regarding specific mention of the bridge in the Statement of Overriding Considerations and Mr. Alford will check whether it is specifically mentioned.

Mr. Alford reported that the bridge is a component proposed by the applicant and that it is not called for in any of the City's policy documents.

Assistant City Attorney Mulvihill reported that a bridge over Pacific Coast Highway is subject to the approval of other agencies.

Commissioner Myers reported that the pedestrian bridge is mentioned in the Development Agreement and added that if it is in the Statement of Overriding Considerations, it should be made a condition/requirement.

Assistant City Attorney Mulvihill stated agreement.

Commissioner Tucker indicated he would be more inclined to not include it in the Statement of Overriding Considerations.

Commissioner Myers agreed with Commissioner Tucker's comments.

Regarding the timing of public improvements, Mr. Alford referenced a table that breaks down the various public components and classifies them by type, area, and what portion of the project that they are linked to. He noted that responses to other comments and issues received from previous hearings have been addressed and presented a comparative analysis of densities of surrounding developments, modifications to the traffic phasing ordinance findings, clarification of language regarding bars and cocktail lounges, opportunities for senior housing and a security bond provision.

Commissioner Tucker commented on affordable housing being done in conjunction with a dense project and wondered regarding the need for a security bond when a certificate of occupancy is required. He suggested leaving the item at the discretion of the Community Development Director to develop language that secures that position and changing the AHIP so that it addresses the issue as one possible alternative.

Assistant City Attorney Mulvihill agreed and suggested striking the last statement on page 554, paragraph C suggesting the bond amount as the in lieu fee and leaving it up to the Community Development Director to decide if a bond is required.

Chair Toerge wondered regarding the possibility that they would be built in a separate building and not be tied to other units.

Commissioner Tucker responded that a phase will come forward with the project and that there is a condition that the certificates of occupancy in that phase are tied to the development of affordable housing units.

Mr. Alford addressed the fiscal impact of the project without the Resort Inn and presented an analysis in the report indicating what the project would be like without any lodging, retail or service/commercial. He stated that even without these components, the project would still have a positive fiscal impact to the City. Mr. Alford addressed the

fiscal impacts of transit occupancy taxes with the use of housing as vacation rentals and reported that these are not linked to units in the Resort Colony area.

Commissioner Myers reported receiving a letter from Community Development Director Brandt regarding correspondence that has been received since the agendas have been compiled and comments on letters and issues regarding delays and re-circulating the EIR and that nothing stated in the letters would affect the ultimate result of the EIR. He asked regarding legal opinion regarding the advice received from consultants, BonTerra, concerning the EIR requiring adequacy and completeness and a good faith effort at full disclosure.

Ms. Mulvihill reported that the decision before the Planning Commission is to make a recommendation to Council who will also revisit the issue. She noted that the statements submitted by the Community Development Director was an attempt to address several issues and reported that many letters were received scanning an entire range of issues that could possibly be raised. Some speak to factual issues and some to process. She stated an EIR is supposed to allow a public agency to review environmental issues relative to a project and base its decision as to whether approve or reject a project based on the analysis. She reported that factual issues of concern pertaining to air quality, noise and others and referenced the consultant's statement that those issues have been addressed. She stated the purpose of these proceedings is to provide disclosure and analysis and agreed that the issues addressed in the documents are the same issues that have been commented on since the Notice of Preparation.

Ms. Mulvihill addressed issues regarding the process and noted there is a specific threshold, under CEQA, to decide whether or not is required to be revisited because of new information and she stated that in Legal Counsel's opinion, the threshold determining the need to re-circulate has not been met in this instance.

Vice Chair Hillgren felt there could be an opportunity to piecemeal the project and inquired regarding the developer's obligation to implement parks and open spaces to ensure the public benefits.

Ms. Mulvihill reported phasing became critical and noted that certain milestones were tied into pulling permits as well as issuing certificates of occupancy within the Development Agreement which is a contract and entitled to enforcement. She stated the City would have the opportunity to enforce the legal requirement. She addressed concerns by the developers who played a role in the process and that ultimately, they will not obtain certificates of occupancy if the conditions of approval are not met.

Mr. Alford reported that staff has tried to link all the various improvements to the anticipated phases of the project. He confirmed that the PC text and the Master Development Plan allow for certain flexibility regarding product type by staff has done its best through the conditions of approval and the tentative tract map that infrastructure are going to be in place when the units are constructed.

Commissioner Tucker noted that each project for development will come before the Planning Commission. He wanted to make sure that through each phase, public benefit opportunities are addressed.

Mike Mohler, Newport Banning Ranch, applicant, provided a PowerPoint presentation on the project. He addressed the clarification of the Statement of Overriding Considerations with respect to the proposed bridge. He stated agreement with the discussed potential changes to the AHIP. He addressed the reuse plan, location, impact of oil operations, development plan with consolidated oil operations, background of the process, components of the report and details of public benefits. Mr. Mohler addressed two issues of concern, including a desire to speak with Council regarding the imposition of a fee on the affordable housing with a view that more affordable housing might occur without imposing further burdens and pertains to CPI inflation. He addressed sponsorship of a conservancy geared at supporting the open space proposals for this project. He announced the founding of the Newport Banning Land Trust and addressed and introduced Members of the Board of Directors, its mission statement and vision.

Interested parties were invited to address the Commission on this item. Chair Toerge reported that testimony will be heard and that each speaker has three minutes in which to provide comments

Steve Ray, Executive Director of the Banning Ranch Conservancy, addressed reconsideration of the EIR and referenced a letter raising issues of concern that may delay the hearing until all of the issues raised are resolved. He asked the Commission cancel the hearing.

Public Speakers included: Pamela Barton-Endalte, Ron Franckewicz, Mary Demos, George Demos, Walter, John Ursini, Dorothy Kraus, Debbie Koken, Dave Sullivan, Natalie Fogerty, Tevis Hill, Terrell Koken, Andy Yach, Christopher Danks, Christina Danks, Sheila Koff, Reed Royalty, Suzanne Forster, June Palomino, Diane Silvers, Bruce Bartram, Kate Klimow, Barry Carlson (Mesa Water), Mark Tabbert, Cindy Black, Sheila Pfafflin, Nicole Marie Hocking, Jim Mansfield, Shawn Ray, Vincent Phillippi, Michelle Simpson, Dr. Jennifer Frutic, Linda Tang, Patricia Barnes, Stan Rosenthal, Robert Schuman, W.D. Heidorn, Jonathan Weiner, Kevin Nelson, Chris Bunion, Norman Suker, Jim Mosher, and Olwen Hageman

Issues of concern and comments voiced by speakers included:

- New information regarding re-mapping of vegetation justifies re-circulation of the EIR
- Violation issued by Coastal Commission regarding unpermitted removal of vegetation not publicly disclosed
- Independent air-quality and noise analysis by Synectecology calls for review and further analysis
- City must respect other agency jurisdiction
- Objection of participation by Commissioner Tim Brown
- Opportunities offered by the project for additional sports fields and economic boost to the area
- Results and findings of an independent environmental analysis by Tom Brody, paid for by residents of Newport Crest
- Support of the project and environmental sensitivity of the developer
- Securing the lands to maintain natural wildlife and the project being a cutting-edge sample of development that can also maintain an environmentally conscious element
- Project is an asset for the community
- Outdated model for measuring air-quality used by BonTerra Consulting and therefore, incorrect
- The project is a bargain for tax payers, generous and will provide jobs
- No money raised by others for cleaning up the land
- Health and safety hazards of oil field developments
- Cost of open space remediation is less than asserted by the City
- Area is self-remediating by phytoremediation
- Additional findings in Mr. Brody's report regarding air quality
- Findings in the staff report duplicate findings of the EIR
- Noise barriers for second-story balconies not feasible or aesthetically pleasing
- Liability for physical injury to realty by the project
- Project is a well-thought out proposal, responsibly addressing housing, commercial and open-space needs for the City
- Only funded option ensuring public access, habitat creation, oil field cleanup and preservation of open space
- Distance of the availability of recycled water for Banning Ranch
- EIR underestimates the number of vernal pools and seasonal wetlands on the Banning Ranch Mesa
- Mesa is a critical habitat for the endangered San Diego Fairy Shrimp
- Adaption of the vernal pools and seasonal wetlands to oil operations
- Impacts to the City of Costa Mesa
- EIR inconclusiveness of data is suspect and Bon Terra failed to conduct listed Fairy Shrimp surveys
- Data regarding actual number of vernal pools was withheld
- Wetlands should be identified by vegetation and soil
- EIR failed to do wetland delineation studies
- Several species of birds nest in the area
- Noise will be created by traffic, use of park and other stationery sources and impacts are understated at receptor locations
- Banning Ranch referred as preferred open space within the General Plan

- City is commended for encouraging the development of affordable homes
- Sierra Club opposes the certification of the EIR
- Plans for development keep changing and homes will be developed first to finance the project
- Impacts of the bridge on the Seashore Drive neighborhood will be negative and will diminish property values
- Opposition to the project because of negative impacts expressed
- EIR findings on health risks and air quality are underestimated
- Natural resources are being depleted at a great rate
- Banning Ranch is rare along the entire California coast and important to many rare species
- OCTA is slated to remove the 19th Street Bridge from the Master Plan of Arterial Highways which will necessitate re-circulation of the Banning Ranch EIR
- Request that no action be taken at this time regarding the project
- Traffic study of the EIR is worthless now that the 19th Street Bridge will be removed from the Master Plan of Arterial Highways
- Current project does not meet ideals of the Green Neighborhood Association
- Statement in resolution to approve the General Plan amendment regarding a previous public hearing held on March 22 and related notice given, is false
- Commissioner Tucker's statement that the Banning Ranch project will only breakeven questions the benefits of the project

There being no others wishing to address the Commission, Chair Toerge closed public comments for this item.

Mike Mohler referenced Mr. Brody's letter and noted that BonTerra is the City's consultant, not the applicant's. Regarding the photographs presented by Mr. Phillippi, Mr. Mohler noted that the majority of the shots are on the open space area being protected by the project and acknowledged that the raptor studies indicate that the raptors are dependent on the upper lowlands area which is being preserved, enhanced and cleaned up of oil. He addressed data relative to the Gnatcatcher, scrutinizing the vernal pool issues by the permitting process, clarified the claim that "remapping" was occurring and Coastal Commission actions. Mr. Mohler indicated there seems to be a consensus that open space and parks are good things and noted that nothing precludes any interested party from submitting a bona fide offer to the property owner at any time. He urged the Commission to recommend all of the items to Council.

In response to Chair Toerge's inquiry, Mr. Mohler indicated he has reviewed all of the resolutions and conditions of approval and is in total agreement with them.

Assistant City Attorney Mulvihill stated the City Attorney's office disagrees with the statements that were made regarding allegations that violations were made that something is illegal. She stated disagreement with the statement that not enough opportunity was given to provide public comments and that there was a noticing issue. She referenced a misstatement regarding actions taken by the OCTA noting that the OCTA suspended the deletion of the bridge. Regarding the issuance of a notice of violation by the Coastal Commission, Ms. Mulvihill reported that staff of the Coastal Commission issued a violation notice to the owners of the Banning Ranch property regarding mowing operations that have been occurring. She stated that it is Legal Counsel's opinion that the notice of violation does not affect the analysis within the EIR. She stated understanding that there is a process by which the notice of violation will be addressed.

Deputy Community Development Director Brenda Wisneski mentioned that although a preliminary analysis of comments have been made, there is no new information that would change staff's conclusions, but staff will provide written responses to comments that will be available to the public prior to City Council's final action on the EIR and the project.

Dana Privett, BonTerra Consulting, stated her firm stands behind the findings in its report and has been responsible in preparing most of the technical reports and has reviewed comments that have been received. With respect to comments regarding specific air quality and noise and greenhouse gas, she introduced Jim Kurtz, Director of Air Quality and Noise for BonTerra Consulting. She added that additional substantiating information will be provided to back up the conclusions that have been reached regarding the adequacy of the EIR.

Jim Kurtz stated the comments were reviewed and the firm feels that no new significant impacts have been identified and that there are no substantial changes in the previously-reported impacts. He addressed the various models used in air quality studies noting that both models are built on the same database and a lot of the output is exactly the same. He addressed comparative runs with the two models and choosing the more conservative model resulting in higher emissions. Mr. Kurtz noted a number of misinterpretations in Mr. Brody's report of the data and reported that the health-risk analysis was performed by a subcontractor of Bon Terra. He reported that the twenty acres were used in the cancer burden analysis and is extraordinarily conservative using 40 percent more area than required by the model. Mr. Kurtz noted that the traffic analysis was done with a slightly lower traffic number and that the cancer risk will be negligible. Mr. Kurtz addressed number of trucks per day and explained it does not predict the truck trips for the project. He added that the air-quality analysis was reviewed by the AQMD once the EIR was submitted.

Commissioner Myers asked for clarification of the statement that construction schedules were artificially drawn out.

Mr. Kurtz reported that the project description calls for building model homes in seven months. However, he noted that the project will be developed in phases and sold accordingly. The schedule used by BonTerra was based on the schedule provided by the developer which shows building over three years for one phase and five for another.

City Traffic Engineer Tony Brine commented on the traffic study related to analysis and the 19th Street Bridge and noted that the year 2016 analysis was done without the 19th Street Bridge, recognizing that the bridge would not be built by that year. The General Plan build-out included analysis with the 19th Street Bridge but in the traffic study it also includes build out without the 19th Street Bridge.

Commissioner Tucker commented on the presentation of the Synectecology report and noted that staff will provide a written response. He felt it should have been brought to the Commission's attention much earlier than it did. He noted that every project ends up with experts with conflicting opinions.

In response to Commissioner Tucker's inquiry, Assistant City Attorney Mulvihill reported that ultimately, it is up to the Planning Commission to make a recommendation and City Council to decide whether or not the EIR should be certified. Regarding the idea of conflicting evidence, she noted that the standard is to determine whether or not the findings required to be made by CEQA as to the existence of significant impacts and the ability to mitigate whether any of the impacts are significant and unavoidable by substantial evidence. She defined substantial evidence as listed by CEQA. Although there may be conflicting evidence, it is up to the lead agency on what to base its decision. CEQA does not require there to be an ultimate agreement on all issues of dispute.

Commissioner Tucker addressed the process, noted it is not taken lightly and reported that all of the issues raised will be vetted out by other agencies in great detail. He noted that the Coastal Commission recently lost a case and although it may take a position on an issue that does not mean that is the ultimate position that will be vindicated. He reported that the applicant has not changed his plan and noted the intent is to understand all of the issues. Commissioner Tucker commented on a State law that dictates the need to plan for a growing population at every segment of affordability. He reported that the applicant is being forced to build affordable housing and that the developer's dream is to break even but does not necessarily happen.

Commissioner Kramer commented on the Development Agreement relative to the City having no source of funds to acquire the property for open space purposes or ability to negotiate with the land owner to acquire the property for its fair market value, that the primary use of the property described in the General Plan is infeasible and the alternative use is appropriate.

City Attorney Mulvihill reported the language was included in the Development Agreement in order to make the necessary findings under the State law relative to Development Agreement and tracks the stated position of the City as well as its decision not to go forward and acquire the property using general funds.

Commissioner Kramer addressed the effective date related to many issues in the Development Agreement as well as the "outside" effective date.

Ms. Mulvihill reported that the effective date is important to the Development Agreement in order to vest development rights and lock in certain regulations as well as obligations by the developer. It allows the developer a certain amount of time to go through the process required for the project. The agreement date is the date in which Council approves the project and a later effective date indicating viability of the project and the City can expect compliance and obligations of the developer.

Commissioner Kramer addressed the relationship between the Resort Inn and the pedestrian bridge issue. He addressed the issue of reclaimed water and felt that if it is adjacent to the property, it should be used for the project. Regarding the Resort Colony, he noted that new language has been inserted regarding other allowable uses in the mixed-use residential district allowing the developer to move the hotel site to another area. He expressed concerns regarding the General Plan specifying that it should be a 75 room resort inn, not a hotel. He indicated concern regarding the resort colony being a place holder for other residential development and the issue regarding the pedestrian bridge not being built if the resort inn is not built. He inquired how much residential could be built within the resort colony if the resort inn is not feasible.

Commissioner Kramer addressed the various criteria regarding the feasibility of the Resort Inn.

Assistant City Attorney Mulvihill reported that the effective date is the later one of six dates and explained the various date milestones.

Ms. Wisneski addressed the issue of reclaimed water noting that the project does not include that component. She stated that after consultation with the Mesa Water District and the applicant, staff has concluded that reclaimed water use is not available for the project.

Regarding the Resort Colony, Ms. Wisneski addressed the option for a hotel use in the mixed-use area noting it has always been available for the project. The new language is for the purposes of clarifying the bar type of use. She pointed out that although the bridge has been tied into the establishment of the resort, it can be built even if the resort is not constructed. She noted that if the resort is not located within the resort colony, 100 dwelling units would be allowed.

Debbie Lynn, City Planning Consultant, reported that the Master Development Plan currently calls for the development of a resort inn on five acres of the Resort Colony. The remainder of the acreage is scheduled for development with 87 residential dwelling units. The zoning allows for the transfer in any residential area of up to 15 percent of increase in units. If the Resort Inn were not built, the maximum amount of dwelling units would be approximately 100 dwelling units, pursuant to a site development approval.

Ms. Wisneski reported that the zoning is both residential and visitor-serving. She addressed the quality of the development.

Commissioner Tucker noted the language relative to the Resort Inn indicates it is to accommodate a maximum of seventy-five rooms in a small, boutique hotel or other overnight accommodations.

Commissioner Kramer addressed the differences between a resort inn and a select-service type hotel located within a mixed-use development. He stated the importance of maintaining the visitor-serving units. He inquired regarding the affordable housing issue relative to calculation of a formula allocating percentages to be designed to the various income levels.

Mr. Alford reported that the basic percentages are identified in the City's Housing Element and while the overall goal is 15 percent of affordable housing City-wide, evaluation can be done on a project-by-project basis.

Ms. Mulvihill added that the City's Housing Element identifies an objective to provide different types of affordable housing. The applicant suggested meeting the affordable requirements by creating moderate units. Staff decided to incentivize the creation of low- to very-low units.

Commissioner Kramer commented on the amount of housing in the City and noted that additional housing is necessary in order for pricing to be reasonable.

Chair Toerge noted the Resort Colony is part of the plan but stated that it can be changed but it would have to come through a process that would come before the Commission and City Council with no guarantee that it would be approved.

Commissioner Brown noted the four options available to the applicant regarding affordable housing and requested clarification of "in lieu" fees.

Mr. Alford responded that the "in lieu" fee is in lieu of construction of affordable housing part of the project. He reported that they would go into a City fund and used to construct affordable housing.

Ms. Mulvihill added that it would be used to construct affordable housing with the idea that certain projects would collectively contribute to the fund and allow the City to provide a larger project area to accommodate affordable housing. The City would be obligated to use those funds for affordable housing.

Mr. Alford addressed the obligation and methods to meet them.

Vice Chair Hillgren felt that the resort inn is an important element of the plan and could be developed almost immediately. He acknowledged development that could occur in advance of the inn and suggested adding time to indicate it could occur after development of additional components.

Chair Toerge noted the options in the staff report related to possible revisions, requiring an independent study and another option of waiting three years. He reviewed the order of business to be acted upon.

Commissioner Tucker wondered whether the Commission has the power to adopt a zoning clause that is inconsistent with the General Plan, but rather the Zoning Code is supposed to implement the General Plan. He addressed coastal access and public use.

Ms. Mulvihill presented recommendations regarding findings for the requirements for re-circulation.

Commissioner Tucker noted that information was received that was responded to by BonTerra that there is not a justification for re-circulation.

Motion made by Commissioner Tucker and seconded by Vice Chair Hillgren, and carried (6 – 0) that based upon substantial evidence in the record there has not been new information or data or change in the project that either results in the creation of a new significant environmental impact or the need to adopt a new mitigation measure or a substantial increase in the severity of environmental impacts or that the draft EIR is fundamentally inadequate and that meaning public review was precluded.

AYES:	Brown, Hillgren, Kramer, Myers, Toerge, and Tucker
NOES:	None
ABSTENTIONS:	None
ABSENT:	Ameri

Vice Chair Hillgren commended the public for their participation in the process, staff for their efforts and colleagues in the Commission for their time and consideration as well as the applicant's diligence and time.

Discussion followed regarding the possibility of amending language to remove or provide for the requirement of the pedestrian bridge.

Motion made by Commissioner Tucker and seconded by Vice Chair Hillgren, and carried (6 – 0), adopt a resolution recommending to the City Council certification of Environmental Impact Report No. ER2009-002

(SCH No. 2009031061) with changes removing mention of the pedestrian bridge from the Statement of Overriding Consideration and changing Page 162, Paragraph 4, "the cost of comprehensive oil field abandonment and remediation" deleting "are estimated at approximately \$30 million, none of which would have to be provided by the City or the public."

AYES: Brown, Hillgren, Kramer, Myers, Toerge, and Tucker
NOES: None
ABSTENTIONS: None
ABSENT: Ameri

Mr. Alford clarified that regarding the pedestrian bridge, the intent is to delete any mention of it since it is not a certainty.

Discussion followed regarding the possibility of qualifying it as a potential pedestrian bridge or leaving it in the findings of fact, but removing it from the Statement of Overriding Consideration or addressing it in the conditions.

Ms. Mulvihill agreed that the statement regarding the bridge is appropriate to be included in the factual findings but because of its lack of certainty, agreed that it removed from the Statement of Overriding Considerations. She reported that staff can sufficiently revise the Statement of Overriding Considerations to remove the pedestrian bridge and retaining it in the project description and Findings of Fact.

Commissioner Kramer commented on the process and commended the applicant for the well-conceived project. He addressed the environmental issues and efforts by the applicant to mitigate them. He expressed his wishes to the applicant for the best of luck and noted there are still many hurdles to go through.

Commissioner Tucker commented on the Commission's charge and obligation relative to providing affordable housing as well as the thorough review of the details of the project and the related documentation. He felt the project is a big benefit to the City and its residents.

Motion made by Commissioner Tucker and seconded by Commissioner Kramer, to adopt a resolution recommending to the City Council approval of General Plan Amendment No. GP2008-008, Code Amendment No. CA2008-004, Planned Community Development Plan No. PC2008-002, Master Development Plan No. MP2008-001, Tentative Tract Map No. NT2008-003, Affordable Housing Implementation Plan No. AH2008-001, and Traffic Study No. TS2008-002 and recommending to the City Council the adoption of a Statement of Overriding Considerations.

Regarding Condition No. 42, Commissioner Tucker suggested that a remedial action plan be approved and implemented by the Orange County Healthcare Agency.

It was noted that the Master Plan was amended to include additional discretionary action for review of the resort (Option 2).

Discussion followed regarding the various options available for the resort and making it contingent on the effective date, either three years or five years.

Mr. Mohler reported that the plan is to absorb the project in eight to ten years. If the economics are favorable and if it is feasible, the resort inn may accelerate the absorption and he stated that the lesser the time, the better. He agreed with three years.

Chair Toerge indicated he would agree with three years from the effective date, not the agreement date.

George Basey, Newport Banning Ranch project, stated that the resort opportunity sits in the first phase of the project and that as a precursor to initiate the project is the site cleanup and addressed site development costs and infrastructure costs. He expressed concerns with having the property fallow at the front end, for an extended period of time.

Commissioner Tucker commented on costs and expressed concern relative to requiring a timeframe for the Resort Inn.

Discussion followed regarding opportunities for the resort inn and conversion to residential and inclusion of a three year timeframe.

A straw vote resulted in a majority of the Commissioners agreeing to inclusion of a three year timeframe from the effective date. Commissioner Tucker registered his dissent.

Commissioner Tucker withdrew his motion.

Ms. Mulvihill reported that the General Plan is the guiding policy document and the overall objectives and goals of the City. The General Plan reflects an objective to see certain uses as set forth. She noted there is no requirement for 1,300 units but rather is a maximum limit.

Motion made by Commissioner Kramer and seconded by Vice Chair Hillgren, and carried (6 – 0), to adopt a resolution recommending to the City Council approval of General Plan Amendment No. GP2008-008, Code Amendment No. CA2008-004, Planned Community Development Plan No. PC2008-002, Master Development Plan No. MP2008-001, Tentative Tract Map No. NT2008-003, Affordable Housing Implementation Plan No. AH2008-001, and Traffic Study No. TS2008-002 and recommending to the City Council the adoption of a Statement of Overriding Considerations, including a restriction from removing a resort inn from the development three years from the effective date. The motion includes deletion of the bond requirement from the AHIB and implementation of the remedial action plan.

AYES: Brown, Hillgren, Kramer, Myers, Toerge, and Tucker
NOES: None
ABSTENTIONS: None
ABSENT: Ameri

Chair Toerge reiterated Commissioner Kramer's comments regarding participation of the public and benefits of the project.

Motion made by Vice Chair Hillgren and seconded by Commissioner Brown, and carried (6 – 0), to continue the meeting past 11:30 p.m.

AYES: Brown, Hillgren, Kramer, Myers, Toerge, and Tucker
NOES: None
ABSTENTIONS: None
ABSENT: Ameri

Motion made by Commissioner Tucker and seconded by Commissioner Kramer, and carried (6 – 0), to adopt a resolution recommending to the City Council approval of Development Agreement (DA2008-003).

AYES: Brown, Hillgren, Kramer, Myers, Toerge, and Tucker
NOES: None
ABSTENTIONS: None
ABSENT: Ameri

Brief discussion followed regarding a slight correction to the report regarding termination date.

Motion made by Commissioner Kramer and seconded by Commissioner Brown, and carried (6 – 0), to suspend the rest of the agenda.

AYES: Brown, Hillgren, Kramer, Myers, Toerge, and Tucker
NOES: None
ABSTENTIONS: None
ABSENT: Ameri

Interested parties were invited to address the Commission on the aforementioned motion. There was no response and Chair Toerge closed public comments.

ADJOURNMENT

Due to the fact that the previous item concluded at 11:28p.m., the Planning Commission suspended to remainder of the agenda to the next meeting. The following item will be considered by the Planning Commission on July, 5, 2012.

ITEM NO. 3 REVIEW OF RULES AND PROCEDURES OF THE PLANNING COMMISSION-(PA2012-065)

The agenda for the Regular Meeting was posted on June 14, 2012, at 1:41 p.m. on the City Hall Bulletin Board located outside of the City of Newport Beach Administration Building.

Michael Toerge, Chairman

Brenda Wisneski, Ex-Officio Secretary